IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 986 of 2005()

EA.536/2000 IN EA.1551/99 IN EP.894/98 IN OS.310/1985 of II ADDL.SUB COURT,THRISSUR

.....

REVN. PETITIONER/PETITIONER/CLAIM PETITIONER):

K.V. TESSY, W/O. KONIKKARA KURIAN,
KALOOR DESOM, ELAMKULAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENT/ RESPONDENT/DECREE HOLDER:

SUVARNA INVESTMENTS, TRICHUR,
REPRESENTED BY ITS MANAGING PARTNER,
VARGHESE KARAKKADA.

BY ADV. SRI.MUHD.MUSHTAQUE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER IN IA.NO.2835/2005 IN CRP.986/2005

Dismissed

19/7/2007 Sd/- P.R.RAMAN, JUDGE

True Copy

P.S. TO JUDGE

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P.R. RAMAN, J.

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C.R.P. NO. 986 OF 2005

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DATED THIS, THE 19TH DAY OF JULY, 2007.

O R D E R

This revision is directed against the order dated 17.8.2005 in E.A. No. 536/2005 in E.A. 1551/1999 in E.P. 894/1998 in O.S. 310/1985 passed by the Sub Court, Trichur.

2. Petitioner herein filed a claim petition as E.A. 1551/1999 in E.P. 894/1999. The respondent herein is the decree holder in a money suit O.S. 310/1985. Petitioner is a third party claimant whose property was attached in the execution stage. It was to lift the attachment the claim petition was filed. The court below, after adjudication, dismissed the claim petition. Though yet another claim was preferred as E.A. 116/2000 in respect of another property ; but that is not the subject matter of this revision. As against the order dismissing E.A. 1551/1999 as well as the order in E.A. 116/2000, two E.F.As were filed before this Court as E.F.A. Nos. 26 and 27/2001 respectively. This Court, by a common judgment dated 22.11.2004, disposed of those two appeals by remanding the matter for fresh consideration in accordance with law. The operative portion of the

judgment reads as follows:

> "The orders impugned in both the appeals will stand set aside and both the claim petitions will go back to the execution court for fresh consideration on condition that the appellant pays a consolidated amount of Rs. 5,000/- towards costs to the respondents through their counsel appearing in this court and further that the appellant deposits a sum of Rs. 50,000/- before the court below within a period of six weeks from today. Upon the payment and the deposit made as directed above, the claim petitions will go back to the execution court and the execution court will permit the decree-holder to raise additional contentions, if any and post the claim petitions thereafter for evidence granting opportunities to both the parties to adduce whatever evidence they choose to and will complete the enquiry within six months from the date of appearance of the parties if the remand order become operative. The parties are directed to appear before the court below on 17th January, 2005.
> The appeals are disposed of as above."

3. Though the petitioner paid the cost she did not make the deposit within time as directed in the judgment. She, therefore, filed an application for enlargement of time as per I.A. 123/2005 before this court. The same was allowed and the time for deposit of the amount was extended till 1.3.2005. The said I.A. was allowed on 11.2.2005 as noticed by the court below in the impugned order. In the mean time, on 18.1.2005, the sale was confirmed in favour of the plaintiff, he being

the purchaser. Thereafter, petitioner filed the present review application E.A. 536/2005 seeking review of the order,. The court below dismissed the application on the ground that the petitioner did not challenge the order dated 18.1.2005 before this court and further, the extension of time was sought suppressing the fact that the sale has already confirmed on 18.1.2005. Further, the decree holder deposited the amount for purchasing the non judicial stamp paper for issuing the sale sannad on 1.3.2005. It is specifically urged in the memorandum of revision that the application seeking enlargement of time was filed before this Court on 10.1.2005 and it was thereafter, the sale was confirmed on 18.1.2005, true, before any order was passed by this Court on the petition for enlargement of time. Therefore, as on the date on which the application for enlargement of time was filed before this Court, petitioner had no occasion to refer to the confirmation of sale since this was happened only later and hence there is no suppression of any fact by the petitioner herein, as observed in the order impugned. The fact that the petitioner did not challenge the order of confirmation by an independent proceeding also will not debar her from seeking a review. As a matter of fact, if that order was challenged, even review may not be maintainable. The question is as to what is the effect of the order enlarging the time for depositing the amount as originally fixed in the judgment in E.F.A. Nos. 26 & 27/2001 and whether there is any bar in

confirming the sale in case the claim petition was pending as on the date of confirmation, i.e. 18.1.2005 arises for consideration.

4. It has to be noticed that though this Court fixed the time of making the deposit, that has been subsequently enlarged as per orders passed in I.A. 123/2005. The petitioner has averred that the deposit has been made within the enlarged time on 1.3.2005. If so, the legal effect of such enlargement of time is that it is the extended time that stands substituted as in the place of time limit originally fixed and once the petitioner complies with the order by depositing the amount within the enlarged time, the directions contained in the judgment comes into effect. This court set aside the order passed in the claim petition filed by the petitioner and directed the court below to reconsider the matter in accordance with law, after giving an opportunity to adduce additional evidence, if any, in the matter. Therefore, the claim petition is still pending adjudication even as on today. As per the proviso to sub-rule 1 of Order XXI Rule 92 of the Code of Civil Procedure, where any property is sold in execution of a decree pending the final disposal of any claim to or any objection to the attachment of such property, the court shall not confirm such sale until the final disposal of such claim or objection. In this case, a claim or objection made to the attachment of the property under Order 21 Rule 58 CPC which, by virtue of the judgment passed in the EFA is still

pending adjudication. Therefore, the bar under the proviso squarely attracts and without disposing the claim, the court cannot, in law, confirm the sale. True, that as on the date of confirmation, the order enlarging time was not passed by this court. But the effect of such enlargement of time, though later in a point of time, has the legal effect of substitution of the enlarged time in the original order and the petitioner, having deposited the amount, has complied with the condition and therefore, the judgment of this Court becomes operative and hence the claim petition or objection to the attachment has to be considered and disposed of by the court below as directed by this court. Therefore, I find that the court was not correct in law in dismissing the review application.

In the result, this revision petition is allowed. The order passed by the court below in the review petition is set aside. The confirmation of sale made by the court below is also set aside and there will be a direction to the court below to dispose of the claim petition filed by the petitioner expeditiously and then to pass orders regarding confirmation of sale, subject to such orders that may be passed in the review.

P.R. RAMAN,
(JUDGE)

knc/-